

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANDRE MURPHY,

Plaintiff,

v.

NOWICKI, et al.,

Defendants.

ORDER and
REPORT & RECOMMENDATION

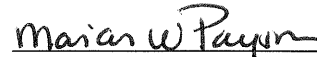
15-CV-6676L

Plaintiff, Andre Murphy (“Murphy”), having filed a motion seeking leave to amend the complaint (Docket # 52), defendants having opposed the motion (Docket ## 56, 57), this Court having reviewed the parties’ submissions, and oral argument having been conducted on April 24, 2018, for the reasons stated more fully on the record on May 15, 2018, it is hereby

ORDERED, that Murphy’s motion to amend (**Docket # 52**) is **GRANTED in PART**, and it is recommended that the district court **DENY in PART without prejudice to renewal**. Specifically, Murphy is hereby granted leave to file and serve the proposed amended complaint, except that I recommend to the district court, for the reasons stated on the record on May 15, 2018, that leave to amend the complaint to assert conspiracy claims under 42 U.S.C. §§ 1983 and 1985(3) be denied without prejudice to renewal. Within fourteen (14) days of the date of this decision, Murphy shall file and serve his amended complaint. Defendants shall answer or otherwise respond to the amended complaint in accordance with the deadlines provided in the Federal Rules of Civil Procedure. It is further,

ORDERED, that all other deadlines in this matter are stayed pending the issuance of an amended scheduling order by this Court. This Court will conduct a status conference on **July 11, 2018, at 11:00 a.m.**

IT IS SO ORDERED.



MARIAN W. PAYSON
United States Magistrate Judge

Dated: Rochester, New York
May 15, 2018

Pursuant to 28 U.S.C. § 636(b)(1), it is hereby

ORDERED, that this Report and Recommendation be filed with the Clerk of the Court.

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of this Court within fourteen (14) days after receipt of a copy of this Report and Recommendation in accordance with the above statute, Fed. R. Civ. P. 72(b), 6(a) and 6(e) and Local Rule 72.


The district court will ordinarily refuse to consider on *de novo* review arguments, case law and/or evidentiary material which could have been, but was not, presented to the magistrate judge in the first instance. *See, e.g., Paterson-Leitch Co., Inc. v. Mass. Mun. Wholesale Elec. Co.*, 840 F.2d 985 (1st Cir. 1988).

Failure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Court's Order. *Thomas v. Arn*, 474 U.S. 140 (1985); *Small v. Sec'y of Health and Human Servs.*, 892 F.2d 15 (2d Cir. 1989); *Wesolek v. Canadair Ltd.*, 838 F.2d 55 (2d Cir. 1988).

The parties are reminded that, pursuant to Rule 72(b) of the Local Rules for the Western District of New York, "[w]ritten objections . . . shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for each objection, and shall be supported by legal authority." **Failure to comply with the provisions of Rule 72(b), or with the similar provisions of Rule 72(a) (concerning objections to a Magistrate Judge's Decision and Order), may result in the District Court's refusal to consider the objection.**

Let the Clerk send a copy of this Order and a copy of the Report and Recommendation to the attorneys for the Plaintiff and the Defendant.

IT IS SO ORDERED.



MARIAN W. PAYSON
United States Magistrate Judge

Dated: Rochester, New York
May 15, 2018